

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Allan et al.**

Serial No.: **09/583,958**

Filed: **May 31, 2000**

For: **Method and System for Dynamic
Update of an Application Monitoring Agent
Using a Non-Polling Mechanism**

§ Group Art Unit: **2154**

§

§ Examiner: **Dustin Nguyen**

§

§ Attorney Docket No.: **AUS920000254US1**

§

§

35525

PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Sir:

A Notice of Non-Compliant Appeal Brief was received by Applicant stating that "the appeal brief filed on September 11, 2007 is considered non-compliant because "The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v))." A copy of the Notice of Non-Compliant Appeal Brief is attached hereto.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

In response to the Notification of Non-Compliant Appeal Brief dated August 13, 2008, please reconsider the holding of non-compliance as follows:

REMARKS

In the Notification of Non-Compliant Appeal Brief, the Appeal Brief filed on September 11, 2007, was held defective because, "The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. Additionally, Appellant must provide support for the means language."

In order to address the Examiner's concerns, a Supplemental Appeal Brief is submitted herewith. It is respectfully submitted that the Supplemental Appeal Brief filed herewith is in compliance with 37 C.F.R. § 41.37. Appellant respectfully requests that the Supplemental Appeal Brief be entered.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 11, 2008

Respectfully submitted,

/Theodore D. Fay/

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Allan et al.	§	Group Art Unit: 2154
	§	
Serial No. 09/583,958	§	Examiner: Dustin Nguyen
	§	
Filed: May 31, 2000	§	Attorney Docket No.: AUS920000254US1
	§	
For: Method and System for Dynamic	§	Confirmation No.: 2335
Update of an Application Monitoring	§	
Agent Using a Non-Polling Mechanism	§	

35525

PATENT TRADEMARK OFFICE
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Commissioner for Patents
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SUPPLEMENTAL APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on September 11, 2007.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

RELATED APPEALS AND INTERFERENCES

This appeal has no related proceedings or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

The claims in the application are: 1-21

B. STATUS OF ALL THE CLAIMS IN APPLICATION

Claims canceled: None

Claims withdrawn from consideration but not canceled: None

Claims pending: 1-21

Claims allowed: None

Claims rejected: 1-21

Claims objected to: None

C. CLAIMS ON APPEAL

The claims on appeal are: 1-21

STATUS OF AMENDMENTS

No Amendments after the Final Office Action dated November 30, 2004 have been filed.

SUMMARY OF CLAIMED SUBJECT MATTER

A. CLAIM 1 - INDEPENDENT

Claim 1 is directed to a method for updating operational parameters (Figure 2A, reference numeral 222; Specification p. 7, ll. 5-6 and p. 14, l. 14) of a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10) on a client (Figure 2A, reference numeral 201; Specification p. 7, l. 6 and p. 13, ll. 19-20) in a distributed data processing system (Figure 2A, reference numeral 200; Specification p. 7, ll. 6-7 and p. 13, l. 18), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19) in the distributed data processing system, the method comprising the steps of:

filtering, by the monitoring agent (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;

determining, by the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15); and

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

B. CLAIM 6 – INDEPENDENT

Claim 6 is directed to a method for updating operational parameters (Figure 2A, reference numeral 222; Specification p. 7, ll. 5-6 and p. 14, l. 14) of a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10) on a client (Figure 2A, reference numeral 201; Specification p. 7, l. 6 and p. 13, ll. 19-20) in a distributed data processing system (Figure 2A, reference numeral 200; Specification p. 7, ll. 6-7 and p. 13, l. 18), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19) in the distributed data processing system, the method comprising the steps of:

filtering, by the monitoring agent (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;

determining, by the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction; and

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

C. CLAIM 8 – INDEPENDENT

Claim 8 is directed to a data processing system (Figure 2A, reference numeral 200; Specification p. 7, ll. 6-7 and p. 13, l. 18) comprising a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19), the data processing system further comprising:

filtering means (Specification p. 14, ll. 10-19) for filtering (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), by the monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;

determining means (Specification p. 15, l. 22 – p.16, l. 6) for determining (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), by the monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15); and

sending means (Specification p. 16, ll. 6-9) for sending (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18), in response to a positive determination

that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

D. CLAIM 9 – DEPENDENT

Claim 9 is directed to the data processing system of claim 8 further comprising:

receiving means (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21) for receiving (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21), at the monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6), the update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21); and

storing means (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21) for storing (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21) updated operational parameters on the client in a manner accessible to the monitoring agent (Figures 3 and 4, reference numerals 314 and 462; Specification p. 18, ll. 6-9 and p. 21, ll. 18-21).

E. CLAIM 10 – DEPENDENT

Claim 10 is directed to the data processing system of claim 8 further comprising:

parsing means (Specification p. 18, ll. 15-21) for parsing (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2) the outgoing transaction for a Uniform Resource Identifier (URI) (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2);

matching means (Specification p. 18, ll. 21-26) for matching (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2) the URI with a URI stored as an operational parameter of the monitoring agent on the client (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2); and

providing means (Specification p. 18, ll. 3-6 and p. 19, ll. 1-3) for providing (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, ll. 3-6) an indication that the outgoing transaction is addressed such that the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, ll. 3-6).

F. CLAIM 13 – INDEPENDENT

Claim 13 is directed to a data processing system (Figure 2A, reference numeral 200; Specification p. 7, ll. 6-7 and p. 13, l. 18) comprising a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19), the data processing system further comprising:

filtering means (Specification p. 14, ll. 10-19) for filtering (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), by the monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;;

determining means (Specification p. 15, l. 22 – p.16, l. 6) for determining (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), by the monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15); and

sending means (Specification p. 16, ll. 6-9) for sending (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18), in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

G. CLAIM 14 – DEPENDENT

Claim 14 is directed to the data processing system of claim 13 further comprising:

parsing means (Specification p. 18, ll. 15-21) for parsing (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2) the outgoing transaction for an Internet Protocol (IP) address;

matching means (Specification p. 18, ll. 21-26) for matching (Figures 3 and 4, reference numerals 310 and 454; Specification p. 7, ll. 16-23 and p. 17, l. 31 – p. 18, l. 2) the IP address with an IP address stored as an operational parameter of the monitoring agent on the client; and

determining means (Specification p. 15, l. 22 – p.16, l. 6) for determining (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, ll. 3-6) that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction.

H. CLAIM 15 – INDEPENDENT

Claim 15 is directed to a computer program product on a computer readable medium for use in a data processing system for updating operational parameters (Figure 2A, reference numeral 222; Specification p. 7, ll. 5-6 and p. 14, l. 14) of a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10) on a client (Figure 2A, reference numeral 201; Specification p. 7, l. 6 and p. 13, ll. 19-20) in a distributed data processing system (Figure 2A, reference numeral 200; Specification p. 7, ll. 6-7 and p. 13, l. 18), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19) in the distributed data processing system, the computer program product comprising:

instructions for filtering, by the monitoring agent (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;

instructions for determining, by the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15); and

instructions for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

I. CLAIM 20 – INDEPENDENT

Claim 20 is directed to a computer program product on a computer readable medium for use in a data processing system for updating operational parameters (Figure 2A, reference numeral 222; Specification p. 7, ll. 5-6 and p. 14, l. 14) of a monitoring agent (Figure 2A, reference numeral 220; Specification p. 7, l. 6 and p. 14, l. 10) on a client (Figure 2A, reference numeral 201; Specification p. 7, l. 6 and p. 13, ll. 19-20) in a distributed data processing system (Figure 2A, reference numeral 200;

Specification p. 7, ll. 6-7 and p. 13, l. 18), the monitoring agent monitoring characteristics of at least one application executing on a server (Figure 2A, reference numeral 202; Specification p. 7, ll. 7-9 and p. 13, l. 19) in the distributed data processing system, the computer program product comprising:

instructions for filtering, by the monitoring agent (Figure 3, reference numeral 302; Specification p. 7, ll. 10-11 and p. 17, ll. 22-24), network data (Figure 2A, reference numerals 206, 208, and 210; Specification p. 7, ll. 10-11, p. 13, ll. 21-24 and 27-28) from the client to the server;

instructions for determining, by the monitoring agent (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15, p. 18, l. 2, and p. 21, ll. 10-16), whether an outgoing transaction in the network data (Figure 2A, reference numeral 210; Specification p. 13, l. 29) is addressed such that an application on the server receives the outgoing transaction (Figures 3 and 4, reference numerals 310 and 458; Specification p. 7, ll. 11-15); and

instructions for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent (Figures 3 and 4, reference numerals 312 and 460; Specification p. 7, ll. 23-26 and p. 18, l. 6, and p. 21, l. 18).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to review on appeal are as follows:

A. GROUND OF REJECTION 1

Obviousness over Pandya et al. in view of Lin et al.

Whether claims 1, 2, 5-9, 12-16, and 19-21 are unpatentable under 35 U.S.C. § 103(a) over Pandya et al., "Software, systems, and methods for managing a distributed network", U.S. Patent No. 6,671,724 B1, filed March 21, 2000, issued December 30, 2003, in view of Lin et al., "Network management system based on passive monitoring and proactive management for formulation behavior state transition models", U.S. Patent No. 6,405,250 B1, filed January 25, 1999, issued June 11, 2002.

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 1, 2, 5-9, 12-16, and 19-21)

1. Claims 1, 2, 5-9, 12-16, and 19-21

All of the pending independent claims have been rejected, at least in part, over a combination of the disclosure of Pandya et al. and Lin et al.; each of the independent claims has one or more common elements against which the rejection applies certain portions of Pandya et al. and Lin et al. However, Appellant asserts that there is at least one element of each independent claim that is not shown in Pandya et al. and Lin et al. nor provided by a combination of Pandya et al. and Lin et al., thereby causing these obviousness rejections to be deficient.

Hence, claims 1-21 stand and fall together as a single group. The rejection of all independent claims is based on the rejection of independent claim 1. Therefore, for purposes of this argument, Appellant argues for the patentability of claims 1-21 of the present invention using claim 1 as an exemplary claim.

The majority of the Office action is devoted to the rejection of independent claim 1, which addresses the first two elements or steps of method claim 1 by referencing Pandya et al. and then addresses the third element or step of method claim 1 by referencing Lin et al. Claim 1 reads as follows:

1. A method for updating operational parameters of a monitoring agent on a client in a distributed data processing system, the monitoring agent monitoring characteristics of at least one application executing on a server in the distributed data processing system, the method comprising the steps of:
 - filtering, by the monitoring agent, network data from the client to the server;
 - determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent; and
 - in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

The first part of the rejection of claim 1 states on page 5, first paragraph, of the final Office action:

- filtering, by the monitoring agent, network data from the client to the server [col 10, lines 12-52];
- determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the

outgoing transaction as a request to change the operational parameters of the monitoring agent [col 8, lines 46-64; col 11, lines 24-35].

The first portion of Pandya et al. that is cited by the rejection reads as follows:

As seen in FIG. 6, agent 70 is interposed between application program 122 and a communications protocol layer for providing end-to-end data transmission, such as transport layer 124 of communications protocol stack 92. Typically, the agent modules of the present invention are used with network devices that employ layered communications software adhering to either the OST or TCP/IP-based protocol models. Thus, agent 70 is depicted as "interposed," i.e. in a data path, between an application program and a transport protocol layer. However, it will be appreciated by those skilled in the art that the invented agent may be used with protocol software not adhering to either the OSI or TCP/IP models, but that nonetheless includes a protocol layer providing transport functionality, i.e. providing for end-to-end data transmission.

Because of the depicted position within the data path, agent 70 is able to monitor network traffic and obtain information that is not available by hooking into transport layer 124 or the layers below the transport layer. At the higher layers, the available data is richer and more detailed. Hooking into the stack at higher layers allows the network to become more "application-aware" than is possible when monitoring occurs at the transport and lower layers.

The agent modules may be interposed at a variety of points between application program 122 and transport layer 124. Specifically, as shown in FIGS. 7 and 8, agent 70 may be associated with a client computer so that it is adjacent an application programming interface (API) adapted to provide a standardized interface for application program 122 to access a local operating system (not shown) and communications stack 92. In FIG. 7, agent 70 is adjacent a winsock API 128 and interposed between application program 122 and the winsock interface. FIG. 8 shows an alternate configuration, in which agent 70 is again adjacent the winsock interface, but the winsock interface is interposed between application program 122 and agent 70. With either configuration, the agent is interposed between the transport layer 124 of communications stack 92 and is adapted to directly monitor data received by or sent from the winsock interface. -- (column 10, lines 12-52).

Hence, the fact that Pandya et al. discloses a monitoring agent (agent module) that filters network traffic is not disputed.

However, the second and third portions of Pandya et al. that are cited by the rejection read as follows (emphasis added):

For example, continuous media applications such as IP telephony have certain bandwidth requirements for optimum performance, and are particularly sensitive to network jitter and delay. **Policies could be written to specify a desired level of service, including bandwidth requirements and threshold levels for jitter and delay, for client computers attempting to run IP**

telephony applications. The policies would further direct the agents and control modules to attempt to provide the specified level of service. Security checking could also be included to ensure that the particular user or client computer was permitted to run the application. In the event that the specified service level could not be provided, the requesting user could be provided with a message indicating that the resources for the request were not available. The user could also be offered various options, including proceeding with a sub-optimal level of service, placing a conventional telephone call, waiting to perform the task until a later time, etc.--(c. 8, 1, 46-64).

To provide the specified network service level, traffic control module 132 may maintain a queue or plurality of queues. When data is sent from the client to the network, or from the network to the client, redirector module 130 intercepts the data, and **traffic module 132 places the individual units of data in the appropriate queue.** The control points may be configured to periodically provide traffic control commands, which may include the QoS parameters and service specifications discussed above. In response, **traffic control module 132 controls the passing of data into, through or out of the queues in order to provide the specified service level.**—(c. 11, lines 24-35).

It should be apparent that Pandya et al. does not disclose the second element of claim 1, i.e. "determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent". At most, Pandya et al. mentions in the second copied portion that "policies would further direct the agents and control modules to attempt to provide the specified level of service"; it may be fairly assumed from this statement that parameters are sent to the agent modules in accordance with the policies. However, the act of sending parameters to the agent modules is not equivalent nor analogous to the feature in the present application in which the monitoring agent scans the network traffic for a particular type of transaction that is being sent to a server in order to request that the server subsequently change the operational parameters of the monitoring agent. The third states that a traffic control module controls the passing of data into, through or out of the queues". Again, this feature is not equivalent or analogous to the claimed feature in the present application against which it was applied, i.e. the second element of claim 1. Hence, Pandya et al. does not have any features that are even remotely analogous to the second element of claim 1.

The second part of the rejection of claim 1 specifically states that Pandya et al. does not disclose the third element of claim 1 and then states on page 5, sixth paragraph of the final Office action, that Lin et al. discloses the third element; the rejection reads:

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction

as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent [col 7, lines 37-50; and col 8, lines 29 - 38].

The portions of Lin et al. that are cited against the third element by the rejection read as follows (emphasis added):

In addition to a database 451 which stores the behavior transition model for the NE associated with MA 450, MA 450 also includes a report filter 452 and an action enforcer 453. Report filter 452 receives raw MIB data, such as counter values and alarms from the associated network element and uses the behavior model in database 451 to filter out unnecessary reporting details. MLB values that are potentially of interest to NMS 120 based on the current status of the NE associated with MA 450 are then aggregated and forwarded to NMS 120 through communicator 454. On the other hand, action enforcer 453 receives action requests from NMS 120 via communicator 454 and processes them. The nature of the requests includes reconfiguring the network element, acquiring specific MIB values, or updating report filtering policies.--(column 7, lines 37-50).

Report filter 452 also receives NE generated alarms. For each alarm received, report filter 452 first saves the alarm information in a log file at step 531, then consults its current reporting policies in database 451 to decide if NMS 120 is interested in the alarm at step 532. Depending on the outcome of the decision box step 532, report filter 452 either forwards the alarm information to communicator 454 at step 533, or proceeds back to the beginning of the event loop at step 502. Report filter 452 also loops back to step 502 at the end of steps 513, 523, and 533.--(column 8, lines 29-38).

It is not clear what features of the system that is disclosed in Lin et al. is meant to be applied against the claimed feature of the present invention because the rejection merely references multiple portions of text in Lin et al. without discussing the disclosed features. At most, Lin et al. discloses filtering of data, accumulation of certain data for forwarding to another entity, and receiving requests to perform certain actions.

However, it should be apparent that Lin et al. does not disclose the third element of claim 1, notwithstanding the argument in the rejection to the contrary; again, the third element of independent claim 1 reads:

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

Hence, Lin et al. does not have any features that are even remotely analogous to the third element of claim 1. The motivational statement in the rejection is completely generic with respect to network

traffic monitoring tools. The rejection states: "It would have been obvious to a person skilled in the art at the time the invention was made to combine the teaching of Pandya and Lin because Lin's teaching of monitoring agent sending request [sic] would allow reduce network traffic [sic] to prevent congestion in a communication network". As should be apparent, the motivational statement does not link any particular characteristic from the teachings of Lin et al. into the teachings of Pandya et al.; there is no argument as to why someone would particularly look to the teachings of Lin et al. for something lacking in the teachings of Pandya et al., and there is no argument as to how an element from the system of Lin et al. could be integrated into the system of Pandya et al.

Appellant admits that both Pandya et al. and Lin et al. disclose distributed monitoring agents. However, these types of systems were admitted as prior art and were distinguished in the present application. Moreover, neither Pandya et al. nor Lin et al. disclose the operation of sending a request from a monitoring agent to a server for operational parameters for the monitoring agent, which is specifically recited in method claim 1 as happening when the agent detects an outgoing transaction to the server to change its operational parameters, or more generally in method claim 6, when the agent detects an outgoing transaction to the server. The present invention is directed to a specific process for the exchange of configuration information between a management server and the distributed monitoring agents; this exchange is triggered by a certain class of events that are detected by a monitoring agent, which is not shown in either Pandya et al. nor Lin et al. nor in a hypothetical combination of the disclosure of these references.

A.1.i Rejections are deficient with respect to requirements for a proper obviousness rejection

Pandya et al. clearly fails to show a feature of the present invention as currently claimed and as asserted by the rejection, thereby rendering Pandya et al. incapable of being used as a primary reference as argued by the current rejection. In addition, Lin et al. clearly fails to show a feature of the present invention as currently claimed and as asserted by the rejection, thereby rendering Lin et al. incapable of being used as a secondary reference as argued by the current rejection. Moreover, the hypothetical combination of Lin et al. and Lin et al. fail to show the claimed features. As should be recognized, because both the primary and secondary references in the rejection fail to disclose the claimed features against which the references were applied, and because the references fail to be combinable to produce this feature, the rejection fails to fulfill the requirements of a proper obviousness argument.

With respect to claims 1-21 of the present patent application, Appellant respectfully submits that the applied references cannot be combined to produce the claimed invention.

Hence, a rejection of claims 1-21 cannot be based upon the cited prior art to establish a *prima facie* case of obviousness. Therefore, a rejection of the claims under 35 U.S.C. 5 103 (a) has been shown to be improper and insupportable in view of the cited prior art , and claims 1-21 are patentable over the applied references. For this and other reasons, Appellant argues that the position of the Examiner should be reversed and that the rejection of claims 1-21 should not be upheld.

B. CONCLUSION

As shown above, the examiner has failed to state valid rejections against any of the claims. Therefore, Applicants request that the Board of Patent Appeals and Interferences reverse the rejections. Additionally, Applicants request that the Board direct the examiner to allow the claims.

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CLAIMS APPENDIX

The text of the claims involved in the appeal is as follows:

1. A method for updating operational parameters of a monitoring agent on a client in a distributed data processing system, the monitoring agent monitoring characteristics of at least one application executing on a server in the distributed data processing system, the method comprising the steps of:

filtering, by the monitoring agent, network data from the client to the server;

determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent; and

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.
2. The method of claim 1 further comprising:

receiving, at the monitoring agent, the update of the operational parameters of the monitoring agent; and

storing updated operational parameters on the client in a manner accessible to the monitoring agent.

3. The method of claim 1 further comprising:
parsing the outgoing transaction for a Uniform Resource Identifier (URL);
matching the URI with a URT stored as an operational parameter of the monitoring agent on the client; and
providing an indication that the outgoing transaction is addressed such that the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent.
4. The method of claim 3, wherein the URT is a Uniform Resource Locator (URL) embedded within a Hypertext Transport Protocol (HTTP) request.
5. The method of claim 1, wherein the request for an update of the operational parameters of the monitoring agent is addressed with a URI stored as an operational parameter of the monitoring agent on the client.
6. A method for updating operational parameters of a monitoring agent on a client in a distributed data processing system, the monitoring agent monitoring characteristics of at least one application executing on a server in the distributed data processing system, the method comprising the steps of:
filtering, by the monitoring agent, network data from the client to the server;
determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction; and
in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

7. The method of claim 6 further comprising:

parsing the outgoing transaction for an Internet Protocol (IP) address;

matching the IP address with an IP address stored as an operational parameter of the monitoring agent on the client; and

determining that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction.

8. A data processing system comprising a monitoring agent, the monitoring agent monitoring characteristics of at least one application executing on a server, the data processing system further comprising:

filtering means for filtering, by the monitoring agent, network data from the client to the server;

determining means for determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent; and

sending means for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

9. The data processing system of claim 8 further comprising:

receiving means for receiving, at the monitoring agent, the update of the operational parameters of the monitoring agent; and

storing means for storing updated operational parameters on the client in a manner accessible to the monitoring agent.

10. The data processing system of claim 8 further comprising:
- parsing means for parsing the outgoing transaction for a Uniform Resource Identifier (URI);
- matching means for matching the URI with a URI stored as an operational parameter of the monitoring agent on the client; and
- providing means for providing an indication that the outgoing transaction is addressed such that the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent.
11. The data processing system of claim 10, wherein the URI is a Uniform Resource Locator (URL) embedded within a Hypertext Transport Protocol (HTTP) request.
12. The data processing system of claim 8, wherein the request for an update of the operational parameters of the monitoring agent is addressed with a URI stored as an operational parameter of the monitoring agent on the client.
13. A data processing system comprising a monitoring agent, the monitoring agent monitoring characteristics of at least one application executing on a server, the data processing system further comprising:
- filtering means for filtering, by the monitoring agent, network data from the client to the server;
- determining means for determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction;
- and
- sending means for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, a request from the

monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

14. The data processing system of claim 13 further comprising:

parsing means for parsing the outgoing transaction for an Internet Protocol (IP) address;

matching means for matching the IP address with an IP address stored as an operational parameter of the monitoring agent on the client; and

determining means for determining that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction.

15. A computer program product on a computer readable medium for use in a data processing system for updating operational parameters of a monitoring agent on a client in the data processing system, the monitoring agent monitoring characteristics of at least one application executing on a server in the data processing system, the computer program product comprising:

instructions for filtering, by the monitoring agent, network data from the client to the server;

instructions for determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent; and

instructions for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

16. The computer program product of claim 15 further comprising:
instructions for receiving, at the monitoring agent, the update of the operational parameters of the monitoring agent; and
instructions for storing updated operational parameters on the client in a manner accessible to the monitoring agent.
17. The computer program product of claim 15 further comprising:
instructions for parsing the outgoing transaction for a Uniform Resource Identifier (URI);
instructions for matching the URI with a URI stored as an operational parameter of the monitoring agent on the client; and
instructions for providing an indication that the outgoing transaction is addressed such that the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent.
18. The computer program product of claim 17, wherein the URI is a Uniform Resource Locator (URL) embedded within a Hypertext Transport Protocol (HTTP) request.
19. The computer program product of claim 15, wherein the request for an update of the operational parameters of the monitoring agent is addressed with a URI stored as an operational parameter of the monitoring agent on the client.
20. A computer program product on a computer readable medium for use in a data processing system for updating operational parameters of a monitoring agent on a client in the data processing system, the monitoring agent monitoring characteristics of at least one application executing on a server in the data processing system, the computer program product comprising:

instructions for filtering, by the monitoring agent, network data from the client to the server;
instructions for determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction; and

instructions for sending, in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction, a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent.

21. The computer program product of claim 20 further comprising:

instructions for parsing the outgoing transaction for an Internet Protocol (IP) address;
instructions for matching the IP address with an IP address stored as an operational parameter of the monitoring agent on the client; and
instructions for determining that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction.

EVIDENCE APPENDIX

This appeal brief presents no additional evidence.

RELATED PROCEEDINGS APPENDIX

This appeal has no related proceedings.



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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/583,958

Applicant(s)

ALLAN ET AL.

Examiner

DUSTIN NGUYEN

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 11 September 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

/Dustin Nguyen/
Primary Examiner, Art Unit 2154